



Bexar County, Texas (hereinafter referred to as “Argo”), and may be served with process by serving its Senior Vice President, Joshua C. Betz c/o Argo Insurance Company, 225 W. Washington, 24th Floor, Chicago, IL 60606 or its mailing address P. O. Box 469011, San Antonio, TX 78246.

### **Jurisdiction**

4. This action is brought pursuant to the Miller Act, 40 U.S.C. § 3131 et. seq. In addition, the State claims are brought pursuant to this Court's ancillary and pendant jurisdiction.

### **Venue**

5. Venue is proper in this Court given that this action arises out of materials, labor and equipment furnished to the Dual Food/BK & Popeye's Project, located in JBSA - Ft. Sam Houston, San Antonio, Texas.

### **Factual Background**

6. On or about July 17, 2018, Sevan entered into Prime Contract No. 7300285455 with the Army & Air Force Exchange Service and the United States of America, in a penal sum amount of \$3,897,764.00 for constructing the Dual Food/BK & Popeye's located at JBSA - Ft. Sam Houston, Bexar County, Texas. (hereinafter referred to as the “Federal Contract”). The subject matter of the Federal Contract shall hereinafter be referred to as the “Federal Project”.

7. In conjunction with entering into the Federal Contract, Sevan and Argo executed a payment bond to secure payment to subcontractors and suppliers who provided labor, materials and equipment to the Federal Project (hereinafter referred to as the “Payment Bond”).

8. On or about October 24, 2018, Reyna entered into a subcontract agreement including change orders with Sevan in connection with providing labor, materials, equipment and services for the Federal Project in the amount of \$625,380.17 hereinafter referred to as the “Subcontract”.

9. Thereafter, and continuing until January 26, 2020, pursuant to the Subcontract, Reyna, delivered labor, materials and equipment to the Federal Project totaling \$699,319.42. There remains outstanding and unpaid, a balance of \$73,939.25 plus \$62,538.02 for retainage of 10% of the amount of the Subcontract including change orders, which is due and owing.

## **COUNT I**

### **MILLER ACT CLAIM**

10. Reyna has fully performed its obligations in furnishing materials, labor and equipment used in the Federal Project pursuant to the Subcontract.

11. Although Reyna was in a direct contractual relationship with Sevan and was therefore not required to do so, Reyna gave written notice to Sevan and Argo of its claim for the sum of \$73,939.25 by correspondence dated January 24, 2020 by certified mail, return receipt requested. A true and correct copy of the written notice containing the invoice is attached as Exhibit "A". Plus, Reyna gave written notice of its retainage of \$62,538.02 which is due and owing in its Payment Application and Certification dated April 2, 2020, a true and correct copy of which is attached as Exhibit "B".

12. This action is brought more than ninety days from the last date Reyna furnished labor, materials and equipment to the Federal Project pursuant to the Subcontract and prior to the expiration of one year from said date.

13. Although Reyna made written demand upon Sevan and Argo for the sum of \$73,939.25 plus \$62,538.02 in retainage, no payment on said demand has been received by Reyna.

14. After all payments, offsets, credits and change orders, Reyna is still owed the amount of \$73,939.25 for the contract work, plus retainage of \$62,538.02. Said damages totaling \$136,477.27 are sought herein against Sevan and its surety, Argo, who provided the Payment Bond.

15. As a result of Sevan's and Argo's refusal to pay and continuing refusal to pay the amount due Reyna, Reyna has suffered damages in the sum of \$73,939.25 plus \$62,538.02 in retainage, plus interest thereon.

## **COUNT II**

### **SEVAN'S BREACH OF CONTRACT**

16. Reyna fully performed its obligations to Sevan pursuant to an agreement Reyna had with Sevan to provide the labor, materials and equipment necessary to complete the work in the amount of \$73,939.25 plus \$62,538.02 in retainage or set forth herein.

17. After all offsets, credits and payments, Reyna is still owed the amount of \$73,939.25 plus \$62,538.02 in retainage or set forth herein.

18. Although written demand was made by Reyna on Sevan to pay the portion of said amounts due, no payments have been received by Reyna.

19. All conditions precedent to the agreement with Sevan have been performed by Reyna or have occurred.

20. As a result of Sevan's refusal to pay and continuing refusal to pay the amount due, Reyna has suffered contractual damages in the sum of \$73,939.25 plus retainage of \$62,538.02, plus interest thereon. Said damages are sought against Sevan.

## **COUNT III**

### **QUANTUM MERUIT**

21. In the alternative, and as a direct result of Reyna's furnishing materials, labor and equipment to the Federal Project, a benefit was conferred upon Sevan in that it was able to use materials, labor and equipment supplied by Reyna to meet its performance obligations to the Federal Project.

22. Sevan accepted the materials, labor and equipment furnished by Reyna to the Federal Project, the reasonable value of which is \$73,939.25 plus \$62,538.02 with retainage as set forth herein.

23. After all lawful payments, offsets and credits, Reyna is still owed the total of \$136,477.27 for the labor, materials and equipment it furnished to the Federal Project for the benefit of Sevan.

24. Despite REYNA's demand for payment in the amount owed to Reyna, Sevan has refused and continues to refuse to pay Reyna the sum Reyna is still owed.

25. Sevan will be unjustly enriched in the amount of \$73,939.25 plus \$62,538.02 in retainage if it is allowed to retain the benefit conferred upon it without payment for the reasonable value of the labor, materials and equipment furnished by Reyna to the Federal Project.

26. As a direct result of the foregoing, Reyna has been damaged to the extent of \$73,939.25 plus \$62,538.02 in retainage, plus interest thereon. Reyna therefore seeks the collection of such damages from Sevan.

#### **ATTORNEYS' FEES**

27. More than thirty days have elapsed since Reyna has made demand on Sevan and Argo for the contract amounts due Reyna as stated above. As a result, Reyna has been required to retain the services of the undersigned counsel to prosecute this action and seek the recovery of its reasonable attorneys' fees.

#### **JURY DEMAND**

28. Plaintiff hereby requests that this matter be presented to a jury of its peers.

#### **PRAYER**

WHEREFORE, Ben Reyna Contracting, Inc., requests that Sevan Multi-Site Solutions, LLC and Argonaut Insurance Company be cited to appear and answer and that upon final trial,

Ben Reyna Contracting, Inc., be awarded a judgment against each Defendants, jointly and severally, as follows:

1. Damages up to the amount of \$73,939.25 plus \$62,538.02 in retainage as provided herein.
2. Prejudgment interest as provided by law.
3. Attorneys' fees.
4. Post-Judgment interest as provided by law.
5. Costs of suit.
6. Such further and other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

E. GARCIA LAW, PLLC  
14400 Northbrook Dr., Suite 230  
San Antonio, Texas 78232  
Telephone: (210) 308-6677  
Facsimile: (210) 525-0960

By



EDGAR GARCIA  
State Bar No. 07632020

ATTORNEYS FOR PLAINTIFF  
BEN REYNA CONTRACTING, INC.

# Exhibit "A"

**E. GARCIA LAW, PLLC  
THE BROOKHOLLOW ATRIUM  
1000 CENTRAL PARKWAY N., SUITE 100  
SAN ANTONIO, TX 78232  
TELEPHONE (210) 524-9002  
FACSIMILE (210) 524-9072**

**EDGAR GARCIA, ESQ.**  
E-Mail: [Edgar@egarcialaw.com](mailto:Edgar@egarcialaw.com)

January 24, 2020

Sevan Multi-Site Solutions, LLC  
3025 Highland Parkway, Suite 850  
Downers Grove, IL 60515

**VIA CM RRR (7008 1830 0001 0479 7791)**

Argonaut Insurance Company  
P.O. BOX 469011  
San Antonio, TX 78246

**VIA CM RRR (7008 1830 001 0479 7784)**

Re:    Claim Amount:        \$73, 939.25  
      Solicitation No.:    PL-K-REC-11-021-18-008  
      Project No.:        372014-000002  
      Project:            Dual Foods/BK and Popeye's  
                              JBSA-Fort Sam Houston  
      Prime Contract No.: 7300285455  
      Payment Bond No.: SUR0027662  
      Our File No.:        Ben Reyna Contracting, Inc./Sevan 7391.003

Gentlemen:

This is to advise you that this firm represents the interests of Ben Reyna Contracting, Inc. ("REYNA") in connection with its claim for payment in the amount of \$73,939.25 against the above-referenced payment bond pursuant to Title 40 USC Subtitle II, Part A, Chapter 31, Subchapter III-Bonds, §3131 et seq.

REYNA has provided labor, equipment and materials for the above-referenced project pursuant to its agreement with Sevan Multi-Site Solutions, LLC ("SEVAN") dated October 24, 2018.

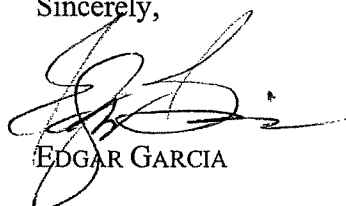
Attached is Invoice No. 0021-831 dated December 31, 2019 in the amount of \$73,939.25, which was submitted to SEVAN for payment on or about December 31, 2019 but remains unpaid. After

all lawful credits, offsets and payments, the sum of \$73,939.25 remains due and owing to REYNA.

Moreover, Argonaut Insurance Company provided Payment Bond no. SUR0027662 dated July 25, 2018 so that subcontractors like REYNA could be assured of payment while working on a federal project. Yet, REYNA's Invoice remains unpaid.

Therefore, demand is made herein upon each of you to pay the sum of \$73, 939.25 to REYNA within ten (10) days of the date of this letter or, upon the expiration of thirty (30) days, REYNA will pursue collection of this sum against each of you, plus attorney's fees, any accrued interest and court costs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edgar Garcia', with a stylized flourish at the end.

EDGAR GARCIA

EG/kab

Enclosure

Cc: Ben Reyna Contracting, Inc. , via e-mail



Ben Reyna Contracting, Inc.

5430 W US Highway 90  
San Antonio, TX 78227

# Invoice

| DATE     | INVOICE # |
|----------|-----------|
| 12/31/19 | 0021-831  |

**BILL TO:**

Matt Wilbourn  
Sevan Multi-Site Solutions, LLC.  
3025 Highland Parkway, Suite 850  
Downers Grove, IL 60515

| P.O. NO.      | TERMS | PROJECT  |
|---------------|-------|--|
| 372014-000002 |       | Dual Foods / Burger King and Popeye's<br>JB SA- Fort Sam Houston |

|  | DESCRIPTION   |              | AMOUNT      |
|--|---|--------------|-------------|
|  | 1. Reinstalled pavement, curbs and drive-thru area. |              | \$51,939.25 |
|  | 2. Demo   |              | \$22,000.00 |
| All work is complete! Thank you for your business. |   | <b>TOTAL</b> | \$73,939.25 |

## APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNERS:

Seven Anti-Site Solutions, LLC  
3023 Highland Parkway, Suite 850  
Downers Grove, IL 60515

FROM CONTRACTOR:

Ben Reyna Contracting, Inc.  
5430 U.S. Hwy. 90 W.  
San Antonio, TX 78227

AIA DOCUMENT G702

PROJECT: Project Number: 372014-00000; APPLICATION NO: 16-Retainage

Dual Food/BK & Popeye's  
JBSSA - Fort Sam Houston

PERIOD TO:

4/2/20

PROJECT NOS:

VIA ARCHITECT:

PAGES

PAGE ONE OF

Distribution to:

|            |   |
|------------|---|
| OWNER      |   |
| ARCHITECT  |   |
| CONTRACTOR | x |

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM
2. Net change by Change Orders
3. CONTRACT SUM TO DATE (Line 1 + 2)
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)
5. RETAINAGE:
  - a. 0% of Completed Work (Column D - E on G703)
  - b. % of Stored Material (Column F on G703)
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)

|    |            |
|----|------------|
| \$ | 533,880.00 |
| \$ | 165,439.42 |
| \$ | 699,319.42 |
| \$ | 625,380.17 |

\$0.00

Included in above

|    |            |
|----|------------|
| \$ | 0.00       |
| \$ | 625,380.17 |

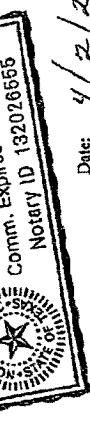
|    |              |
|----|--------------|
| \$ | 562,842.15   |
| \$ | 62,538.02    |
| \$ | \$73,939.25* |

| CHANGE ORDER SUMMARY  |              | ADDITIONS    | DEDUCTIONS   |
|---|--------------|--------------|--------------|
| Total changes approved in previous months by Owner                  |              | \$92,711.17  | (\$1,211.00) |
| * (Work in dispute) Reinstalled pavement, curbs and drive thru area | \$51,939.25  |              |              |
| * (Work in dispute) Demo  | \$22,000.00  |              |              |
| TOTALS  | \$73,939.25* | \$92,711.17  | (\$1,211.00) |
| NET CHANGES by Change Order   |              | \$165,439.42 |              |

CONTRACT DATE: 10/24/18

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts shown on this Application for Payment are correct and that the Contractor has received from the Owner the amount shown on this Application for Payment.

CONTRACTOR:



Date: 4/2/20

By: *Ben Reyna*  
State of: Texas  
County of: Bexar  
Subscribed and sworn to before me this 2 day of April 2020  
Notary Public: *Ben Reyna*  
My Commission expires: May 24, 2023

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: \_\_\_\_\_ Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20005-5022

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA - 01602

Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.

# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

APPLICATION NO: 16-Retainage

Contractor's signed certification is attached.

APPLICATION DATE: 4/2/2020

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO: 4/2/2020

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO:

| A<br>ITEM<br>NO. | B<br>DESCRIPTION OF WORK                       | C<br>SCHEDULED<br>VALUE | D<br>WORK COMPLETED                     |             | F<br>MATERIALS<br>PRESENTLY<br>STORED<br>(NOT IN<br>D OR E) | G<br>TOTAL<br>COMPLETED<br>AND STORED<br>TO DATE<br>(D+B+F) | H<br>%<br>(G ÷ C) | I<br>BALANCE<br>TO FINISH<br>(C - G) | J<br>RETAINAGE<br>(IF VARIABLE<br>RATE) |
|------------------|--|-------------------------|---|-------------|---|---|-------------------|--------------------------------------|---|
|                  |  |                         | FROM PREVIOUS<br>APPLICATION<br>(D + E) | THIS PERIOD |   |   |                   |                                      |   |
| 1                | Matt Slab                                      | \$181,250.00            | \$181,250.00                            |             |   | \$181,250.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 2                | Slab Walls / Footings                          | \$84,100.00             | \$84,100.00                             |             |   | \$84,100.00   | 100.00%           | \$0.00                               | \$0.00                                  |
| 3                | Slab on grade                                  | \$35,905.00             | \$35,905.00                             |             |   | \$35,905.00   | 100.00%           | \$0.00                               | \$0.00                                  |
| 4                | Paving   | \$142,000.00            | \$142,000.00                            |             |   | \$142,000.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 5                | Sidewalks                                      | \$17,000.00             | \$17,000.00                             |             |   | \$17,000.00   | 100.00%           | \$0.00                               | \$0.00                                  |
| 6                | Curbs  | \$56,000.00             | \$56,000.00                             |             |   | \$56,000.00   | 100.00%           | \$0.00                               | \$0.00                                  |
| 7                | Light Bases                                    | \$9,750.00              | \$9,750.00                              |             |   | \$9,750.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 8                | Bollards / Sitchboard Pads                     | \$7,875.00              | \$7,875.00                              |             |   | \$7,875.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 9                | CO#1 Pest Control                              | (\$1,211.00)            | (\$1,211.00)                            |             |   | (\$1,211.00)  | 100.00%           | \$0.00                               | \$0.00                                  |
| 10               | CO#1 Tie Down Walk                             | \$30,600.00             | \$30,600.00                             |             |   | \$30,600.00   | 100.00%           | \$0.00                               | \$0.00                                  |
| 11               | CO#2 repair slab entry/groat columns & frames  | \$10,200.00             | \$10,200.00                             |             |   | \$10,200.00   | 100.00%           | \$0.00                               | \$0.00                                  |
| 12               | CO#3 install concrete lid for electrical vault | \$2,160.00              | \$2,160.00                              |             |   | \$2,160.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 13               | CO#3 saw / chip out/ demo for brick lug        | \$3,407.00              | \$3,407.00                              |             |   | \$3,407.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 14               | CO#4 remove & replace forms / set light buses  | \$3,200.00              | \$3,200.00                              |             |   | \$3,200.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 15               | CO#5 extend dumpster pad                       | \$8,487.00              | \$8,487.00                              |             |   | \$8,487.00  | 100.00%           | \$0.00                               | \$0.00                                  |
| 16               | CO#6 apron, grease trap, curb, rear parking    | \$20,068.53             | \$20,068.53                             |             |   | \$20,068.53   | 100.00%           | \$0.00                               | \$0.00                                  |
| 17               | CO#7 drain entrance, domes, additional curb    | \$9,147.60              | \$9,147.60                              |             |   | \$9,147.60  | 100.00%           | \$0.00                               | \$0.00                                  |
| 18               | CO#8 extra drain                               | \$2,708.64              | \$2,708.64                              |             |   | \$2,708.64  | 100.00%           | \$0.00                               | \$0.00                                  |
| 19               | CO#9 work on aprons at curb inlets             | \$2,732.40              | \$2,732.40                              |             |   | \$2,732.40  | 100.00%           | \$0.00                               | \$0.00                                  |
| GRAND TOTALS     |  | \$625,380.17            | \$625,380.17                            | \$0.00      | \$0.00  | \$625,380.17  | 100%              | \$0.00                               | \$0.00                                  |

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